Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

KEITH J THOMPSON,
Petitioner,

v.

NATIONAL RAILROAD PASSENGER CORPORATION,
Respondent

On Petition For Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

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A 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEITH J. THOMPSON,

Plaintiff,

Case No. C99-1616L

v.

NATIONAL RAILROAD PASSENGER CORPORATION,

Defendant.

REPORT AND RECOMMENDATION

I. INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff seeks review of an arbitration award issued by the Special Board of Adjustment No. 928 ("SBA") on October 14, 1997, upholding Plaintiff's discharge on June 6, 1996, by his former employer the National Railroad Passenger Corporation ("Amtrak"). He appeals the decision by the SBA No. 928 under the Railway Labor Act ("RLA"). 45 U.S.C. 151 et. seq.

Plaintiff filed his initial complaint on October 8,1999, against the National Mediation Board ("NMB") and SBA No. 928. (Dkt. # 1). The NMB on behalf of itself and SBA No. 928 filed a motion to dismiss. (Dkt. # 10). Plaintiff then filed a motion to amend his complaint to name Amtrak as the defendant in lieu of the NMB and SBA No. 928. (Dkt. # 14). On June 6, 2000, this Court permitted the Plaintiff to amend

his complaint. (Dkt.# 21). Plaintiff filed his amended complaint against Amtrak on July 21, 2000 (Dkt. # 26), seeking to set aside the award issued by SBA No. 928 that upheld the termination of his employment with Amtrak ("Award").

This case is before the Court on Amtrak's motion to dismiss Plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted. Alternatively, Amtrak moves for summary judgment.

This Court recommends that Defendant's motion to dismiss be granted because Plaintiff's Amended Complaint is barred by the statute of limitations. Should the District Court agree with this recommendation, the four pending discovery motions filed by Plaintiff should be stricken as moot.

II. DISCUSSION

A. Standard of Review.

On a motion for judgment on the pleadings pursuant to Rule 12, the court accepts all of the material allegations in a plaintiff's amended complaint as true and construes the allegations in the light most favorable to the nonmoving party. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969); Oscar v. University Students Co-op Ass'n, 965 F.2d 783, 785 (9th Cir. 1992). The court may not consider materials outside the complaint and the pleadings. See Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1997).

A motion for judgment on the pleadings only admits, for the purposes of the motion, all well-pleaded facts in the amended complaint, as distinguished from conclusory allegations. See Mitchell v. King, 537 F.2d 385, 386 (10th

Cir. 1976); see also Jones v. Community Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984) (conclusory allegations unsupported by facts are insufficient to state a claim under 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988). Because Plaintiff is proceeding pro se in this matter, he is entitled to a liberal construction of his amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992), cert. Denied, 506 U.S. 915 (1992).

B. Plaintiff's Claims against Amtrak are Barred by the Statute of Limitations.

Plaintiff's claims under 45 U.S.C. 153 fail to state a claim upon which relief may be granted because his amended complaint against Amtrak is barred by the two-year statute of limitations:

> All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

45 U.S.C. 153 First (r). A cause of action accrues under an award of a special board of adjustment on the date it is rendered. See Transportation Communications Int'l Union v. CSX Transportation, Inc., 30 F. 3d, 903, 905 (7th Cir. 1994). SBA No. 928 rendered its Award on Plaintiff's claim on October 14, 1997. Therefore any claim challenging SBA No. 928's Award filed after October 14, 1999, is barred by the statute of limitations. Plaintiff's Amended Complaint, which named Amtrak as Defendant, was filed on July 21, 2000.

C. Plaintiff's Claims Against Amtrak do not Relate Back Under Rule 15(c)(3).

Plaintiff's claims against Amtrak do not relate back to the date of his original pleading, filed October 8, 1999, against the NMB and SBA No. 928. See Fed. R. Civ. P. 15(c)(3). Whether an amendment that attempts to bring in a new party will relate back to the date of the original pleading depends on four factors: (1) the claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be added must have received such notice that it will not be prejudiced in maintaining its defense; (3) the party to be added must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and, (4) the second and third requirements must have been fulfilled within the prescribed limitations period. Schiavone v. Fortune, 477 U.S. 21, 29 (1986). All four of these factors must be satisfied. Id.

The Court need not decide whether the first three factors have been satisfied because a review of the record makes clear that the fourth factor has not been satisfied. The fourth factor requires that the notice provisions contained in the second and third factors be satisfied within the prescribed limitations period. Amtrak had no knowledge of the action against it, within the two-year statute of limitations. (Dkt. # 57 at 8). As noted above, the claim against Amtrak in this action was first presented to the Court in Plaintiff's Amended Complaint filed on July 21, 2000. (Dkt. # 24). Thus, prior to July 21, 2000, no one had notice of the claim against Amtrak. Therefore Plaintiff cannot be permitted to pursue his claim against Amtrak because Amtrak could not have been on notice of the claim until July 21, 2000, at the earliest, more than nine months after the statute of limitations expired.

III. CONCLUSION

This Court recommends that Defendant's motion to dismiss be granted because Plaintiff's complaint is barred by the statute of limitations. Should the District court agree with this recommendation, the four pending discovery motions filed by Plaintiff should be stricken as moot. (Dkt. ## 47, 51, 56, and 63). A Proposed Order accompanies this Report and Recommendation.

DATED this day 27 of June, 2001.

s/ M J Benton
MONICA J. BENTON
United States Magistrate Judge

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AUG 13 2001
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEITH J. THOMPSON,

Plaintiff,

Case No. C99-1616L

v.

NATIONAL RAILROAD PASSENGER CORPORATION,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

This Court has reviewed the Report and Recommendation of United States Magistrate Judge Monica J. Benton and adopts the report and recommendation that defendant National Railroad Passenger Corporation's ("Amtrak's") motion to dismiss be granted for the reasons explained below.

Amtrak's motion to dismiss is premised on the argument that plaintiff Keith J. Thompson's

("Thompson's") action is barred by the following statute of limitations:

> All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

45 U.S.C. 153, First (r). It is clear that Thompson's action accrued on October 14, 1997, the date of the award of a special board of adjustment. He thereafter realized that the proper defendant was not the National Mediation Board but Amtrak. He then filed a motion to amend his complaint to name Amtrak as the defendant, which was granted on June 6, 2000. Thompson filed an amended complaint with Amtrak as the named defendant on July 21, 2000.

Amtrak argues that Thompson's amended complaint must be dismissed because it was filed on July 21, 2000, more that two years and seven months after the October 14, 1997 date of accrual. It also argues that his amended complaint does not relate back under Fed. R. Civ. P. 15(c) because Amtrak had no knowledge of the lawsuit.

Thompson first argues that this issue has already been addressed by the Court. He asserts that the Court granted his leave to amend and therefore resolved any doubt that the lawsuit could go forward against the proper defendant. He also argues that 45 U.S.C. 153 First (r) applies to the filing of the action rather than the naming of the proper defendant. With regard to the relation back issue, he asserts that his original complaint explicitly referenced the Amtrak Hearing Officer and he believes Amtrak was aware of his case. He does not provide any evidence of Amtrak's awareness of his original complaint.

The Court first addresses Thompson's reasonable confusion regarding his amended complaint. While Thompson was given leave to amend his complaint, this decision did not address the statute of limitations issue. After being served with Thompson's amended complaint, Amtrak raised the statute of limitations issue in its answer and again in its motion to dismiss. When a court grants leave to amend a complaint, such a ruling does not signify that a plaintiff's amended complaint will not be dismissed for reasons highlighted by the newly named defendant.

Next, the Court addresses the language and the interpretation of 45 U.S.C. 153, First (r). This statute bars lawsuits that are filed more than two years after the date of accrual. See e.g., Gibson v. Missouri Pac. R.R. Co., 441 F.2d 784, 786 (5th Cir. 1971). The limitations period is to be strictly enforced. See Gatlin v. Missouri Pac. R.R. Co., 631 F.3d 551, 555 (8th Cir. 1980). The facts in Gatlin are similar to the facts here and the Eighth Circuit found the cause of action to be barred by 45 U.S.C. 153, First (r):

> To summarize: appellants, causes of action accrued the date Public Law Board 596 issued its decision: October 6, 1971. The two-year period of limitations in 45 U.S.C. s 153 (First) (r) applies to their claim for review of the Board's decision, against Missouri Pacific. A two-year limitations period also restricts their suit against the United Transportation Union for unfair representation.

631 F.3d at 556-57. As Gatlin demonstrates, no exceptions to the statute of limitations are made, even in situations where different defendants are named.

Finally, the Court addresses the issue of relation back. Amtrak asserts that it had no knowledge of Thompson's suit.

While Thompson's original complaint may have referenced Amtrak, this is insufficient to have given Amtrak notice of the suit. Thompson provides no evidence that Amtrak knew or should have known about his original complaint. Accordingly, the relation back theory fails.

For the foregoing reasons, this Court adopts the report and recommendation GRANTING Amtrak's motion to dismiss. It also strikes the following motions as moot: (1) Plaintiff's Motion to Oppose Delivery of Defendant's First Set of Request for Production of Documents; (2) Plaintiff's Motion to Oppose Delivery of Defendant's First Set of Interrogatories; (3) Plaintiff's Motion to Compel Discovery; and (4) Plaintiff's Motion to Adjust Case Scheduling Order. The Clerk of the Court is directed to send copies of this Order to all counsel of record, to plaintiff and to the Honorable Monica J. Benton.

DATED this ___*13th*___ day of *August* 2001.

s/ Robert S Lasnik
Robert S. Lasnik
United States District Judge

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SEP 13 2001
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEITH J. THOMPSON,

Plaintiff,

Case No. C99-1616L

v.

NATIONAL RAILROAD PASSENGER CORPORATION,

Defendant.

ORDER DENYING MOTION FOR RECONSIDERATION

This matter comes before the Court on plaintiff Keith Thompson's ("Thompson's") motion for reconsideration of this Court's August 13, 2001 Order Adopting Report and Recommendation that dismissed Thompson's complaint.

Motions for reconsideration are disfavored and are ordinarily denied unless the moving party can demonstrate manifest error in the prior ruling or show

new facts or legal authority that it could not have brought to the Court's attention earlier with "reasonable diligence." Local Rule 7(e). The Court applies this standard to Thompson's motion.

Thompson argues that he can demonstrate new facts that warrant reconsideration. He submits a letter from the National Mediation Board, dated August 17, 2001, four days after this Court dismissed his case. Thompson has not demonstrated that he utilized reasonable diligence and was unable to procure this letter at an earlier time.

Accordingly, Thompson's motion for reconsideration is DENIED. The Clerk of the Court is directed to send copies of this Order to all counsel of record and to Mr. Thompson.

DATED this 13th day of September, 2001.

s/ Robert S Lasnik
Robert S. Lasnik
United States District Judge

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEITH J. THOMPSON

Plaintiff,

Case No. C99-1616L

v.

NATIONAL RAILROAD PASSENGER CORPORATION,

Defendant.

ORDER GRANTING MOTION TO DISMISS

I. INTRODUCTION

This matter comes before the Court on an order from the Ninth Circuit Court of Appeals. The Ninth Circuit vacated the Court's dismissal of this action and remanded the matter for determination of whether the defendant National Railroad Passenger Corporation ("Amtrak") was put on notice of the litigation and knew or should have known that it

was a proper defendant within 120 days of the filing of *pro se* plaintiff Keith Thompson's original complaint. For the reasons set forth in this Order the Court finds that Mr. Thompson failed to demonstrate that Amtrak received notice of this action within 120 days of the filing of the original complaint, and therefore Mr. Thompson's amended complaint does not "relate back" to the original complaint's filing date pursuant Fed. R. Civ. P. 15(c). Therefore Mr. Thompson's claim is barred by the two-year statute of limitations.

II. BACKGROUND

Mr. Thompson seeks review of an arbitration award issued by the Special Board of Adjustment No. 928 ("SBA") on October 14, 1997. That arbitration award upheld Thompson's discharge from his former employer, Amtrak. The Railway Labor Act provides that such actions must be initiated "within two years from the time the cause of the action accrues under the award of the division of the Adjustment Board, and not after." 45 U.S.C. 153 First (r). Mr. Thompson filed his original complaint on October 8, 1999, against the National Mediation Board (the "NMB") and the SBA. The parties do not dispute that the original complaint was filed within the statute of limitations period.

On March 31, 2000, Mr. Thompson filed a motion to amend his original complaint. This Court granted that motion on June 6, 2000. Mr. Thompson filed his amended complaint, which named Amtrak as a defendant, on July 21, 2000.

On August 13, 2001, this Court issued an order adopting Magistrate Judge Benton's report and recommendation that Amtrak's motion to dismiss be granted. The dismissal was

based upon the Court's finding that Mr. Thompson's action was barred by the two-year statute of limitations. On August 28, 2001, Mr. Thompson filed a motion for reconsideration of the Court's order of dismissal. In his motion for reconsideration Thompson argued that a letter he received from the NMB (the "NMB Letter") on August 25, 2001, demonstrated that Amtrak knew of this action within 120 days of the filing of the original complaint and therefore pursuant to Fed. R. Civ. P. 15(c) his claim is not barred. On September 13, 2001, this Court issued an order denying Thompson's motion for reconsideration on the grounds that Thompson had not demonstrated that he utilized reasonable diligence and was unable to procure the NMB Letter at an earlier time.

Thompson appealed the August 13 and September 13 Orders to the Ninth Circuit Court of Appeals. On August 19, 2002, the Ninth Circuit Court of Appeals vacated this Court's order of dismissal and remanded the matter "for a determination of whether Amtrak was put on notice of the litigation, and knew or should have known that it was a proper defendant, within 120 days of the filing of Thompson's original complaint." The Ninth Circuit's mandate was filed with this Court on October 21, 2002.

Both parties have submitted briefs regarding whether the NMB Letter demonstrates that Amtrak was put on notice of the litigation and knew or should have known that it was a proper defendant within the required time after the filing of the original complaint.

III. DISCUSSION

Fed. R. Civ. P. 15(c) provides in relevant part:

> An amendment of a pleading relates back to the date of the original pleading when

> ...
> (3) ...within [120 days], the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

If these requirements are met and the original complaint was filed within the statute of limitations period, a plaintiff may maintain an action against a defendant named in an amended complaint even if that amended complaint was not filed within the statute of limitations period. G.F. Co. v. Pan Ocean Shipping Co., Ltd., 23 F.3d 1498, 1501 (9th Cir. 1994).

Thompson's original complaint was filed on October 8, 1999. Therefore the Fed. R. Civ. P. 15(c) notice and knowledge requirements must have been met by February 7, 2000, for the amended complaint to relate back to the original complaint's filing date. [1]

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[1] February 5, 2000 is 120 days after October 8, 1999. February 5, 2000 was a Saturday. "In computing any period of time prescribed or allowed by these rules ... the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday ... in which event the period runs until the end of the next day which is not one of the aforementioned days." Fed. R. Civ. P. 6(a). Therefore, the 120-day Fed. R. Civ. P. 15(c) period expired on Monday, February 8, 2000.

The NMB Letter, which Mr. Thompson argues demonstrates that Amtrak had notice and knowledge of the suit, states that "the NMB obtained a copy of the record of proceedings to Award No. 193 of your case from the National Railroad Passenger Corporation." (Motion for Reconsideration Ex. 2). Although the original complaint was filed on October 8, 1999, the NMB was not served until January 20, 2000. The NMB's counsel appeared in this matter on January 31, 2000. Sometime prior to the March 16, 2000 filing of the NMB's motion to dismiss, the NMB requested a record of the proceedings from Amtrak. See NMB Motion to Dismiss at 6. That record of proceedings was filed with the Court on April 5, 2000.

Mr. Thompson contends that because the NMB requested a copy of the record of proceedings from Amtrak sometime prior to March 16, 2000, Amtrak was on notice of the litigation and had real or constructive knowledge that it was the proper defendant by February 7, 2000. The plaintiff bears the burden of demonstrating that the defendant received notice of the litigation within the 120-day period for the amended complaint to relate back to the filing of the original complaint under Fed. R. Civ. P. 15(c). Slater v. Skyhawk Transp., Inc., 187 F.R.D. 185, 195 (D.N.J. 1999) ("Slater's Amended Complaint does not relate back to the date of the original complaint, because Slater has failed to demonstrate that S.D. Warren received notice of the institution of this litigation within 120 days of the filing of the original complaint."). To find that the amended complaint relates back to the filing of the original complaint, Thompson asks the Court to speculate that Amtrak received the NMB's request for the record of proceedings between January 20 and February 7, 2000, and that the request

provided notice of the litigation. The Court finds that the NMB Letter and other evidence before the Court do not demonstrate that Amtrak had notice of the litigation and actual or constructive knowledge that it was the proper defendant by February 7, 2000. Therefore the amended complaint does not relate back to the original complaint and this action is barred by the statute of limitations. See 45 U.S.C. 153 First (r).

IV. CONCLUSION

For the foregoing reasons Amtrak's motion to dismiss is GRANTED. The Clerk of the Court is directed to send copies of this Order to Mr. Thompson and all counsel of record. The Clerk of the Court is also directed to enter judgment in favor of Defendant and against Plaintiff.

DATED this *16th* day of December, 2002.

s/ Robert S Lasnik
Robert S. Lasnik
United States District Judge